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IN THE
Supreme Court of the United States

ALI SALEH KAHLAH AL-MARRI,
Petitioner,

v.

DANIEL SPAGONE, U.S.N.,
CONSOLIDATED NAVAL BRIG.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF *AMICI CURIAE* HUMAN RIGHTS AND RELIGIOUS ORGANIZATIONS IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTEREST OF AMICI 1

SUMMARY OF ARGUMENT 2

FACTUAL BACKGROUND 4

A. Al-Marri's Criminal Detention 4

B. The Evasion of the Federal Courts 6

C. Isolation, Dependency and Trust 8

D. The Authority for and Provenance of Al-Marri's Extralegal Detention and Interrogation 10

E. Application of Isolation and Interrogation Techniques Against Al-Marri 15

F. Al-Marri's Damaged Psychological Condition 19

ARGUMENT 20

AL-MARRI'S DESIGNATION AND SUBSEQUENT DETENTION AS AN "ENEMY COMBATANT" WERE NOT AUTHORIZED BY THE AUMF OR THE LAWS OF WAR 20

A. *Hamdi*'s Construction of the AUMF Authorized Detention Only Against a Limited Class of Persons and Under Limited Conditions 21

B. The Executive's Transfer of Al-Marri into Indefinite Military Detention for the Purpose of Interrogation Exceeded the AUMF'S Authorization for Detention of Combatants.....25

1. Al-Marri's Transfer and Detention Were Not "Necessary" to Any Lawful Military Purpose 25

2. Al-Marri's Transfer, Continuing Detention and Conditions of Confinement Are Not "Appropriate" to Any Lawful Military Purpose 28

CONCLUSION.....33

TABLE OF AUTHORITIES

CASES Page(s)

Al-Marri v. Gates, No. 2:05-2259-HFF-RSC (D.S.C. Mar. 10, 2008) 15, 19

Al-Marri v. Hanft, No. 02:04-2257-26AJ (D.S.C.).....20

Al-Marri v. Pucciarelli, 534 F.3d 213 (4th Cir. 2008).....7

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Dow v. Johnson, 100 U. S. 158 (1879).....27

Duncan v. Kahanamoku, 327 U.S. 304 (1946).....28

Ex parte Milligan, 71 U.S. 2 (1866)..... 27-28

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Hamdan v. Rumsfeld, 548 U.S. 557 (2006)..... 24, 29-30

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In re Territo, 156 F.2d 142 (9th Cir. 1946).....22

Little v. Barreme, 6 U.S. 170 (1804) 24

Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64 (1804) 21

Olmstead v. United States, 277 U.S. 438 (1928).....32

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Ruiz v. Johnson, 37 F. Supp. 2d 855 (S.D. Tex. 1999) 29

Sherman v. United States, 356 U.S. 369 (1958) 32

The Paquette Habana, 175 U.S. 677 (1900) 21

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Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952) 24, 28

STATUTES

18 U.S.C. § 2332B 6

18 U.S.C. § 2339A 6

18 U.S.C. § 2340 11

18 U.S.C. § 2384 6

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28 C.F.R § 501 6

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Memorandum from John Yoo, Deputy Assistant Attorney General, Office of Legal Counsel, to William J. Haynes II, General Counsel for the Department of Defense, *Re: Military Interrogations of Alien Unlawful Combatants Held Outside the United States* (Mar. 14, 2003) 10

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INTEREST OF AMICI[1]

Amici curiae Human Rights Watch, Center for Constitutional Rights, National Religious Campaign Against Torture, Evangelicals for Human Rights, Physicians for Human Rights, Islamic Society of North America and The Advocates for Human Rights[2] are not-for-profit public interest entities united in their common goal of ensuring the government's compliance with the law, even in the face of new challenges presented by the "war on terror." Through litigation, research, public education and advocacy—including for some, faith-based advocacy—*amici* have worked to ensure that the United States, as the historic leader in the development of fundamental human rights norms, abides by its obligations under the Constitution, laws and treaties governing the rights of persons held in its custody.

While *Amici* agree with the arguments presented in the Brief for Petitioner, Ali Saleh Kahlah al-Marri, they write specifically to highlight evidence demonstrating an improper, instrumental motive for al-Marri's "enemy combatant" designation and to bring to the Court's attention disturbing facts surrounding his five years of isolation and interrogation in military custody. *Amici* believe that

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[1] No counsel for any party authored this brief in whole or in part, and no party or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. Letters of consent from the parties have been filed with the Clerk's office along with this brief.

[2] A full statement of each amicus' interest can be found in the Appendix.

these facts demonstrate not only that Congress could not have authorized this type of indefinite detention in its 2001 Authorization for the Use of Military Force, but also sharply underscore the very risks associated with domestic military detention that our constitutional system was designed to avoid in the first place.

SUMMARY OF ARGUMENT

The government has claimed authority to indefinitely detain a person who has been apprehended inside the United States—thousands of miles from any armed conflict—and who is unaffiliated with any enemy government, pursuant to the September 2001 Congressional Authorization for the Use of Military Force ("AUMF"), Pub. L. No. 107-40, 115 Stat. 224. The AUMF delegated to the President the power to use "necessary and appropriate force" against individuals he determines are responsible for the September 11, 2001 terrorist attacks. Relying on the Court's plurality opinion in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), the government has suggested that al-Marri is the equivalent of a traditional combatant under the laws of war and defends his detention as a "simple war measure."

Amici fully agree with Petitioner that the AUMF cannot be construed, consistent with the Constitution or the laws of war, to authorize the detention of a person such as al-Marri, who was apprehended by domestic law enforcement officials thousands of miles from any battlefield. Even if the AUMF could be construed to reach al-Marri, however, the alarming facts surrounding al-Marri's

designation and detention as an "enemy combatant" demonstrate the government's actions exceeded any limited authority granted by Congress.

In *Hamdi*, the plurality concluded that the AUMF authorized the detention of a "limited category" of persons captured in a zone of armed conflict because, under longstanding law-of-war principles, detention is considered a necessary incident to the use of force. However, as *Hamdi* recognized, the grant of power to detain carries with it corresponding limitations on the manner in which that power is used. To be considered a "necessary and appropriate" incident to the use of force, a detention must be only for the limited purpose of preventing a combatant's return to the battlefield, must be humane and not punitive, and must be reasonably limited to the period of active hostilities.

Yet even assuming al-Marri could be considered a "combatant" under the AUMF, the government has violated the conditions necessary to the exercise of any asserted detention power. First, by the time the President elected to designate him an "enemy combatant," al-Marri had already been incarcerated for approximately eighteen months in federal custody and was facing long-term imprisonment on the charges upon which he was indicted. Thus, his abrupt transfer to indefinite military detention was not "necessary" to the lawful end of preventing him from "returning" to any putative "battlefield." In addition, strong evidence suggests that al-Marri was transferred out of the criminal process precisely in order to evade the constraints of constitutional, statutory and international law, and to subject him to a newly developed regime of grinding, endless

isolation—one specifically calculated to render him helpless, despairing and maximally vulnerable to interrogation.

In sum, the government subjected al-Marri to "long-term detention for the purpose of interrogation," which the *Hamdi* Court concluded was "certainly" not authorized by the AUMF. 542 U.S. at 521. Indeed, the treatment al-Marri endured in detention runs afoul of hundreds of years of this country's most fundamental prohibitions against the abuse and torture of prisoners. *See Padilla v. Rumsfeld*, 542 U.S. 426, 465 (2004) (Stevens, J., dissenting); *Ashcraft v. Tennessee*, 322 U.S. 143, 155 (1944). The Court should avoid placing its imprimatur on the government's extra-legal conduct and should reject the government's asserted detention authority in this case.

FACTUAL BACKGROUND

A. Al-Marri's Criminal Detention

On December 12, 2001, al-Marri, a Qatari citizen lawfully present in the United States, was arrested by the Federal Bureau of Investigation ("FBI") at his home in Peoria, Illinois, at the direction of the United States Attorney's Office for the Southern District of New York. Appendix to Petition for Certiorari ("Pet. App.") 12a-13a. The U.S. Attorney alleged al-Marri to be a material witness in the government's investigation of the terrorist attacks of September 11, 2001. *Id.* He was imprisoned first in Peoria and then, following his transfer to New York, specially housed in solitary confinement in a maximum security prison. *Id.* at 13a.

In February 2002, al-Marri was charged in the Southern District of New York with possession of unauthorized or counterfeit credit card numbers with the intent to defraud. In January 2003, after nearly one year in segregated confinement, al-Marri was charged in a second, six-count indictment with making false statements to the FBI, making false statements in a bank application, and identity fraud. In May 2003, the court granted al-Marri's motion to dismiss the indictments for lack of venue, and he was returned to prison in Peoria. *Id.* at 323a.

There, a federal grand jury sitting in the Central District of Illinois returned a new indictment against al-Marri, alleging the same counts that had been dismissed. *Id.* Had the government obtained a conviction on these charges, al-Marri could have been imprisoned for up to 30 years under the Federal Sentencing Guidelines' permissible enhancements for alleged terrorist-related activities. *See* U.S. Sentencing Guidelines Manual § 3A1.4. Al-Marri pleaded "not guilty" to these charges on May 29, 2003, and the court set a trial date for July 21, 2003. Pet. App. 13a.

Immediately following his arraignment, the government barred counsel access to al-Marri, and announced it would be imposing Special Administrative Measures ("SAMs"), which are authorized in terrorism or national security cases. SAMs grant the government broad power to limit a defendant's ability to communicate non-legal

messages to his counsel or other persons outside the prison.[3]

B. The Evasion of the Federal Courts

On Friday, June 20, 2003, the court scheduled an evidentiary hearing on al-Marri's motion to suppress evidence. On the following Monday, approximately one week before the hearing and one month before trial, the government moved to dismiss al-Marri's indictment, based on a redacted declaration from President Bush designating al-Marri an "enemy combatant." Pet. App. 13a-14a. The declaration stated that al-Marri was "closely associated with al Qaeda," and that he had "engaged in conduct that constituted hostile and war-like acts, including conduct in preparation for acts of international terrorism." Pet. App. 466a. All of these allegations could have been prosecuted under existing federal criminal statutes, in addition to the charges for which al-Marri was already indicted.[4] Even though al-Marri was entering his eighteenth month in federal custody and was facing continued, long-term imprisonment and the imposition of restrictive SAMs, President Bush declared him a "continuing, present, and grave danger to the national security of the United States," whose military detention was

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[3] *See* 28 C.F.R § 501 (extending period of time in which SAMs can be imposed and broadening range of communications that can be monitored by government).

[4] *See, e.g.*, 18 U.S.C. § 2384 (criminalizing conspiracy to overthrow, make war against or oppose by force the government of the United States); 18 U.S.C. § 2339A (criminalizing the provision of "material support or resources" to terrorist organizations); 18 U.S.C. § 2332B (criminalizing "acts of terrorism transcending national boundaries").

"necessary to prevent him from aiding al Qaeda." Pet. App. 467a.

The Justice Department readily acceded to al-Marri's transfer out of the criminal justice system, and the Defense Department moved al-Marri to the Naval Brig in South Carolina. Attorney General Ashcroft has explained that, while in the criminal justice system, al-Marri refused offers to "improve his lot" by cooperating with FBI investigators; al-Marri was thus transferred to the military because he "insisted" on becoming "a hard case"—presumably because he elected to assert his constitutional entitlement to trial by jury. John Ashcroft, *Never Again: Securing America and Restoring Justice* 168-69 (2006); *see also Al-Marri v. Pucciarelli*, 534 F.3d 213, 237 n.19 (4th Cir. 2008) (Motz, J., dissenting).

This strategic use of the Article III courts mirrors the government's conduct in the case of the other domestically-apprehended "enemy combatant," Jose Padilla. In that case, just two days before a district court hearing on Padilla's motion to dismiss the material witness warrant against him, the government informed the court *ex parte* that President Bush had designated Padilla an "enemy combatant" and ordered his transfer to the custody of the Department of Defense. *Padilla ex rel. Newman v. Rumsfeld*, 243 F. Supp. 2d 42, 48-49 (S.D.N.Y. 2003), *aff'd in part, rev'd in part sub nom. Padilla v. Rumsfeld*, 352 F.3d 695 (2d Cir. 2003), *rev'd*, 542 U.S. 426 (2004) (discussing government's "disappointing conduct" in case). On the question before the Court of whether the filing of a *habeas* petition on Padilla's behalf by his court-appointed attorney in New York was proper, four justices

emphasized that his transfer had been "shrouded in secrecy," and that the government should not be permitted "to obtain a tactical advantage as a consequence of an *ex parte* proceeding." *Padilla*, 542 U.S. at 459 and n.3 (Stevens, J., dissenting).

C. Isolation, Dependency and Trust

What government interest could be served by transferring al-Marri from confinement in a prison cell in the civilian system to a prison cell in the military system? In a declaration filed by Admiral Lowell E. Jacoby in Jose Padilla's case—a document the recently-appointed Deputy Attorney General in the Office of Legal Counsel described as the "Rosetta Stone" for understanding the Bush Administration's detention strategy[5]—the government laid bare its reasons for keeping Padilla in military custody.[6] Admiral Jacoby, the former Director of the Defense Intelligence Agency, explained in frank, clinical terms that the military's "robust program" for the interrogation of "enemy combatants" is "largely dependent upon creating an atmosphere of dependency and trust between the subject and

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[5] Martin Lederman, *The Rosetta Stone of the Detention/Interrogation Scandal*, Balkinization Blog, Aug. 14, 2007, *available at* http://balkin.blogspot.com/2007/08/rosetta-stone-of-detentioninterrogation.html (the Jacoby declaration is the "most important public government document" in the "detention/interrogation scandal" because it reveals that "the dominant purpose of this detention regime is intelligence-gathering")

[6] Declaration of Vice Admiral Lowell E. Jacoby (U.S.N.), Director of the Defense Intelligence Agency ("Jacoby Decl."), at 4-6, *Padilla v. Bush*, 233 F. Supp. 2d 564 (S.D.N.Y. 2002) (seeking reconsideration of Jose Padilla's access to counsel).

interrogator." *Id.* at 4. Therefore, he explained, "it is critical to minimize external influences on the interrogation process." *Id.* at 5.

This process takes time, Jacoby warned: potentially "months, or even years." *Id.* at 4.[7] Access to counsel might "substantially harm our national security interests" because a prisoner can only be fully exploited for "all possible intelligence information," after he learns that "help is not on the way." *Id.* at 8. A prisoner must not be permitted to maintain an expectation "that his ultimate release may be obtained through an adversarial civil litigation process." In sum, allowing a prisoner to have any hope of release was understood to undermine the central goal of enemy combatant detention: interrogation. *Id.*[8]

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[7] In a declaration filed in Yasser Hamdi's case, the then-acting commander of the Guantanamo Bay detention facility asserted that, in order to maintain the atmosphere required for successful interrogation, the prisoner must be held in a "tightly controlled environment." *See* Declaration of Donald J. Woolfolk at 2, *Hamdi v. Rumsfeld*, 296 F.3d 278 (4th Cir. 2002) *available at* http://fl1.findlaw.com/news.findlaw.com/hdocs/docs/hamdi/hamdi61302wlflkdec.pdf.

[8] *See also* Lederman, *Rosetta Stone* ("[T]he dominant purpose of [the Bush Administration's] detention regime is intelligence gathering," which is something the "[Bush] Administration has concluded can only be effective if the will, the human agency, of the detainees is broken completely.").

D. The Authority for and Provenance of Al-Marri's Extralegal Detention and Interrogation

An examination of the genesis of the legal and policy decisions relating to al-Marri's detention further suggests that the government's motive in transferring al-Marri was exploitation through highly coercive interrogation methods, rather than incapacitation. Most directly, on March 14, 2003, only three months prior to al-Marri's transfer, the Deputy Assistant Attorney General in the Office of Legal Counsel, John Yoo, issued a Memorandum to the General Counsel of the Department of Defense[9] ("March 2003 Memo"), which gave near-blanket authority for Defense Department personnel to conduct detention and interrogation operations outside the constraints of law. The March 2003 Memo concluded that the Fifth Amendment does not "address actions the Executive takes" against persons the president designates as "enemy combatants" (March 2003 Memo at 6-9); it reiterated a prior conclusion that the Fourth Amendment has "no application to *domestic* military operations" (*id.* at 8 n.10 (emphasis in original)), and tellingly asserted that the Eighth Amendment prohibition

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[9] Memorandum from John Yoo, Deputy Assistant Attorney General, Office of Legal Counsel, to William J. Haynes II, General Counsel for the Department of Defense, *Re: Military Interrogations of Alien Unlawful Combatants Held Outside the United States* (Mar. 14, 2003). Although the March 2003 Memo focused on the legal status of "enemy combatants" held outside the United States—where, in fact, the overwhelming majority were detained—the document explicitly stated that its conclusions applied also to domestically detained "enemy combatants." *Id.* at 8.

against "cruel and unusual punishments" "applies solely to those persons upon whom criminal sanctions have been imposed," but not to "enemy combatants" (*id.* at 10).

The March 2003 Memo also replicated verbatim arguments made in a now-infamous 2002 Memorandum authored by the same Office of Legal Counsel to the Central Intelligence Agency, which had concluded that there could be virtually no statutory or international law constraints on CIA interrogation operations.[10] According to both Justice Department memoranda, 18 U.S.C. § 2340, which criminalizes acts of torture committed by U.S. officials, would not proscribe an interrogator's conduct unless he acted with the narrow "specific intent" to torture, which was defined to cover only pain equivalent to "organ failure" or "death." March 2003 Memo at 45; August 2002 Memo at 6. Regardless, the Justice Department concluded that any limitations on an interrogator's conduct from either 18 U.S.C. § 2340 or the Convention Against Torture would be unconstitutional if the interrogation were authorized by the President acting under his Article II and Commander in Chief Powers: Congress "can no more interfere with the President's conduct of the interrogation of enemy combatants than it can dictate strategic or tactical decisions on the battlefield." March 2003 Memo at 19; August 2002 Memo at 39.

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[10] *See* Memorandum from Jay S. Bybee, Assistant Attorney General, to Alberto R. Gonzales, Counsel to the President, *Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A* (Aug. 1, 2002) (the "August 2002 Memo").

Although these memoranda were later repudiated by the Justice Department,[11] they appear to have encouraged the government simply to avoid the constraints of the criminal process in favor of military custody with an attendant unbounded authority to isolate and interrogate al-Marri—indefinitely and often brutally.

What is more, there is substantial evidence that the Executive both solicited the issuance of the March 2003 Memo based on its author's previously accommodating conclusions regarding the lawfulness of interrogation practices and that, once issued, the government expressly relied upon its authorization to formulate an aggressive interrogation program for persons in Defense Department custody.[12] Specifically, on April 16, 2003, Secretary of Defense Donald Rumsfeld, ignoring vigorous opposition from senior military legal officers,[13] approved 24 of 26

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[11] *See* Jack Goldsmith, *The Terror Presidency: Law and Judgment Inside the Bush Administration* 151 (2007). A number of commentators have criticized the memos' reasoning as a "one-sided justification for conferring legal immunity" on government actors. *See Restoring the Rule of Law: Hearing Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary*, 110th Cong. 178 (2008) (joint statement of David J. Barron, Walter E. Dellinger, Dawn E. Johnsen, Neil J. Kinkopf, Martin S. Lederman, Trevor W. Morrison and Christopher H. Schroeder).

[12] S. Comm. on Armed Services, 110th Cong., *Inquiry Into the Treatment of Detainees in U.S. Custody, Executive Summary* ("Armed Servs. Summary") at xviii (2008).

[13] *See* Jane Mayer, *The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals* 226-236 (2008) (describing objections by Alberto Mora, General Counsel of the U.S. Navy, to interrogation methods being employed in Guantanamo and the subsequent decision-making process to formally sanction those methods which excluded

techniques which had been recommended by a "Working Group" of military and civilian government officials based on its review of the March 2003 Memo.[14] The techniques he approved—some of which the former General Counsel of the U.S. Navy considered "at a minimum cruel and unusual treatment, and, at worst, torture"[15]—included prolonged isolation, sleep deprivation, sensory deprivation and dietary manipulation.[16] A number of these techniques were employed on al-Marri.[17]

In devising these interrogation techniques, the Working Group did not operate on a blank slate. It borrowed heavily from a U.S. military program called Survival, Evasion, Resistance and Escape ("SERE"), initiated in order to train U.S. soldiers to resist the types of interrogation methods employed

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Mora and other concerned military officers); Memorandum from Alberto J. Mora to Inspector General, Department of the Navy, *Statement for the Record: Office of General Counsel Involvement in Interrogation Issues* ("2004 Mora Memo"), 18 n.12, (Jul. 7, 2004).

[14] Armed Servs. Summary at xii; *see also Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy and Operational Considerations* ("*Working Group Report*"), (Apr. 4, 2003), *available at* http://www.dod.mil/pubs/foi/detainees/-working_grp_report_detainee_interrogations.pdf.

[15] 2004 Mora Memo at 14.

[16] *See* Memorandum from Secretary of Defense to the Commander, US Southern Command, *Subject: Counter-Resistance Techniques in the War on Terrorism*, (Apr. 16, 2003), *available at* http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/03.04.16.pdf. The Working Group had determined that all of these techniques had "high utility." *See generally, Working Group Report*.

[17] *See infra* at 15-19.

by Chinese Communists in the Korean War to induce false confessions.[18] Under the SERE training program, soldiers undergo aggressive interrogation techniques designed to "induce control, dependency, compliance and cooperation,"[19] most of which are "based on illegal exploitation (under the rules listed in the 1949 Geneva Convention Relative to the Treatment of Prisoners of War) of prisoners over the last 50 years."[20]

A U.S. airman explained that the harsh forms of isolation, control and humiliation to which his North Korean interrogators had subjected produced "a slow, quiet, diabolical" destruction of his mind.[21] And, even though they were considered unlawful when used against U.S. military personnel, many of those very same techniques were frequently employed in Guantanamo, and made their way to al-Marri's prison cell.[22]

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[18] Armed Servs. Summary at xiii; Mayer, *The Dark Side* 157-59 (describing genesis of SERE program and application to terrorist suspects in U.S. custody).

[19] *See* S. Comm. on Armed Services, 110th Cong., *Inquiry Into the Treatment of Detainees in U.S. Custody, Documents Referenced in Senator Levin's Opening Statement*, Tab 3, *Physical Pressures used in Resistance Training and Against American Prisoners and Detainees*, July 25, 2002, attached to July 26, 2002 Joint Personnel Recover Agency ("JPRA") Memorandum.

[20] Armed Servs. Summary at xiii (quoting a JPRA instructor).

[21] Mayer, *The Dark Side* 157.

[22] *See infra* at 15-19 (describing interrogation measures used on al-Marri). The Standard Operating Procedures ("SOPs") for Guantanamo were officially adopted for the U.S. Naval Brig in South Carolina, in which al-Marri and other domestically detained "enemy combatants" were held. *See* Pamela Hess, *U.S. Detainee Abuse Drove Prisoner to Brink of Insanity, New Documents Show*, Associated Press, Oct. 8, 2008 (describing

E. Application of Isolation and Interrogation Techniques Against Al-Marri

June 2003 to October 2004. Following al-Marri's designation as an "enemy combatant" in June 2003, the government confined him in nearly complete isolation inside the Naval Brig in South Carolina. *See* Certification of Andrew Savage, Esq. ("Savage Cert.") ¶ 3, Exhibit A to Plaintiff's Motion for Interim Relief, *Al-Marri v. Gates*, No. 2:05-2259-HFF-RSC (D.S.C. Mar. 10, 2008).[23] Ever since, al-Marri has been a "subject" in the isolation and interrogation program devised by the Defense Department and authorized by the Department of Justice.

For the first sixteen months of his confinement at the Brig, al-Marri was held entirely *incommunicado*, and denied any contact with the outside world, including his family, his lawyers and the International Committee for the Red Cross ("ICRC").

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contents of documents recently released by Department of Defense). Section 4-20 of those SOPs, entitled "Behavioral Management Plan" states: "The purpose of the Behavior Management Plan is to enhance and exploit the disorientation and disorganization felt by a newly arrived detainee in the interrogation process. It concentrates on isolating the detainee and fostering dependence of the detainee on his interrogator." Memorandum from Geoffrey D. Miller, Major General, U.S. Army, to All Personnel, *Approval of Camp Delta Standard Operating Procedures (SOP)* (Mar. 27, 2003), *available at* http://www.aclu.org/pdfs/safefree/gitmo_sop.pdf.

[23] The Savage Certification was filed in a separate litigation challenging the conditions of al-Marri's confinement and seeking equitable relief. The government has never answered these allegations so they remain undisputed.

Id. ¶ 6.[24] During this time, al-Marri was imprisoned in a six-foot by nine-foot cell in which he stayed for up to 24 hours a day. *Id.* ¶¶ 8, 10. To deprive al-Marri of natural light and any opportunity to see the outside world, his cell window was painted over in dark colors. *Id.* ¶¶ 11-12. The Brig staff also regularly denied al-Marri the most basic necessities, including adequate clothing and hygienic items. *Id.* ¶¶ 30-31. As his counsel later explained, "virtually every aspect of al-Marri's physical environment caused him disorientation, isolation, discomfort and sometimes pain." *Id.* ¶ 38. Al-Marri confessed to his attorneys that he "thought he was losing his mind." *Id.* ¶ 46. Al-Marri's account was corroborated by Naval Brig officers carrying out the Pentagon's interrogation program. *See* Pamela Hess, *Officer Wrote of Harsh Treatment of U.S. Detainee,* L.A. Times, Oct. 10, 2008, at A2 (reporting on documents disclosing that Naval Brig warned Pentagon officials that detainees, including al-Marri, were being "driven nearly insane by months of punishing isolation and sensory deprivation").[25]

In addition to imposing a regime of prolonged, total isolation, the government subjected al-Marri to dangerous and cruel interrogation measures, such as stress positions, prolonged exposure to extremely

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[24] In fact, his only human contact during that period was with the government interrogators and the prison guards who wore duct tape over their name badges and did not speak to al-Marri except to give him orders. Savage Cert. ¶ 7.

[25] Al-Marri's regime of isolation and interrogation mirrors that employed against Jose Padilla, which also caused Padilla to suffer significant psychological harm. *See* Motion to Dismiss Indictment for Outrageous Government Conduct, *U.S. v. Padilla*, No. 04-06001 (S.D.N.Y.).

cold temperatures, extreme sensory deprivation and threats of violence and death. Savage Cert. ¶¶ 23, 25, 27. On a number of occasions, interrogators stuffed al-Marri's mouth with cloth and sealed it with heavy duct tape, causing him serious pain; on one occasion this forced gagging procedure caused al-Marri to start choking. *Id.* ¶ 29. Interrogators reinforced this physical abuse with threats, promising for example, to send al-Marri to Egypt or Saudi Arabia where he would be tortured, sodomized and forced to watch his wife raped. *Id.* ¶ 25. They also threatened to make al-Marri "disappear" so that no one would know where he was. *Id.* ¶ 27.[26]

The government recorded hours of al-Marri's interrogations on videotape, but for unspecified reasons destroyed those recordings during the pendency of al-Marri's *habeas* proceedings; the recordings were reported to have corroborated al-Marri's accounts of abuse. *See* Mark Mazzetti and Scott Shane, *Pentagon Cites Tapes Showing Interrogations,* N.Y. Times, Mar. 13, 2008, at A1 (quoting anonymous government officials who recalled that destroyed tapes showed "rough treatment" and "manhandl[ing]" of al-Marri, including duct-taping his mouth).

The government also restricted al-Marri's ability to practice his faith. Savage Cert. ¶¶ 19-21. His interrogators denied him water to purify himself and

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[26] The government punished al-Marri when he failed to provide the information sought by his interrogators. On occasion and for days at a time, al-Marri was placed in a completely bare and cold cell for refusing to answer questions and denied his requests for extra clothing or a blanket. Savage Cert. ¶ 24.

a prayer rug to kneel on when praying; they also prohibited al-Marri from knowing the time of day or direction of Mecca, which prevented him from praying properly. *Id.* ¶¶ 20-21. The only religious item al-Marri was permitted was a Koran, and even this was often employed as a bargaining chip to facilitate interrogation. *Id.* at 20; *see also Carol D. Leonnig, Pentagon Report Cited Detention Concerns*, Wash. Post, Dec. 14, 2006, at A1 (describing Pentagon report documenting interrogators' efforts to deprive al-Marri "of sleep and religious comfort by taking away his Koran, warm food, mattresses and pillow as part of an interrogation plan approved by the high-level Joint Forces Command").

October 2004 to Present. In October 2004, several months after the Court's decision in *Hamdi*, the government finally permitted al-Marri to meet with counsel, though his initial access was monitored and severely restricted. Savage Cert. ¶¶ 6, 34-35. Having the opportunity to meet with his lawyer, however, did not alleviate the harsh conditions of his daily existence. On a number of occasions, al-Marri was confined to his cell for 24 hours a day, 7 days a week, for months at a time; the government also continued to deny al-Marri access to all external stimuli such as books or newspapers. *Id.* ¶¶ 10-12, 18.

In August 2005, al-Marri's counsel commenced an action challenging the conditions of his confinement. *Id.* ¶ 48. This alleviated some of the most punitive measures, but did not fundamentally alter the central operating principle of his confinement—prolonged isolation. *Id.* ¶ 54.

F. Al-Marri's Damaged Psychological Condition

After over 2000 days in the Brig, al-Marri suffers from many of the predictable psychological effects of his grim and desolate confinement. In March 2008, a prominent expert in the psychological effects of solitary confinement conducted an evaluation of al-Marri. The expert noted that the conditions under which al-Marri had been confined for years were more onerous than those endured by anyone he had observed other than "individuals who were incarcerated brutally in some third-world countries." Declaration of Dr. Stuart Grassian ("Grassian Decl.") at 15, Exhibit B to Plaintiff's Motion for Interim Relief, *Al-Marri v. Gates*, C/A 2:05-2259-HFF-RSC (D.S.C. Mar. 10, 2008).

According to the expert evaluation, al-Marri "clearly is suffering quite profoundly from increasingly severe symptoms related to his prolonged incarceration in solitary," including severe perceptual problems, increasing hypersensitivity to ordinary stimuli, and obsessive and paranoid thoughts. Grassian Decl. at 16-17. In addition to impairing al-Marri's ability to work with his lawyers, the continued stresses of his confinement may affect him "for a prolonged period of time, or even indefinitely." *Id.* at 17.

ARGUMENT

AL-MARRI'S DESIGNATION AND SUBSEQUENT DETENTION AS AN "ENEMY COMBATANT" WERE NOT AUTHORIZED BY THE AUMF OR THE LAWS OF WAR.

Relying on this Court's plurality opinion in *Hamdi*, the government has claimed that al-Marri's designation as an "enemy combatant" and subsequent detention outside the criminal process are authorized by the AUMF's delegation of power to the President. Specifically, the government defends al-Marri's indefinite detention on the grounds that it "is a simple war measure" necessary to "prevent his return to the battlefield."[27]

Amici agree fully with Petitioner's position that, whatever force and detention power the AUMF may have provided the Executive in conducting armed conflict abroad, the AUMF does not, and could not, specifically authorize the seizure and detention of U.S. citizens or others lawfully residing inside the U.S., thousands of miles from any armed conflict. Even if such a general authority could be found in the AUMF, however, the facts of al-Marri's designation as an "enemy combatant" and transfer out of the criminal justice system demonstrate that his potentially indefinite military detention was not a "necessary" or "appropriate" incident to the use of force.

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[27] Answer to Petition for Writ of Habeas Corpus 8, *Al-Marri v. Hanft*, No. 02:04-2257-26AJ (D.S.C.).

A. *Hamdi*'s Construction of the AUMF Authorized Detention Only Against a Limited Class of Persons and Under Limited Conditions.

The AUMF authorized the President to use "all necessary and appropriate force" against "nations, organizations, or persons" he determines were "associated with the September 11, 2001, terrorist attacks." *Hamdi*, 542 U.S. at 518 (plurality opinion). Applying standard canons of statutory construction, *see Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804), *The Paquette Habana*, 175 U.S. 677, 700 (1900), the Court interpreted that authorization in accordance with the laws of war. *Hamdi*, 542 U.S. at 518. The Court thus concluded that the AUMF authorized force against the "limited category" of persons who "fought against the United States in Afghanistan," *Hamdi*, 542 U.S. at 518, a category into which the Court found Hamdi easily fell. *Id.* at 523 (referring to the "context of this case: a United States citizen captured in a foreign combat zone") (emphasis omitted); *id.* at 509 (describing allegation that Hamdi "took up arms with the Taliban during this conflict" in Afghanistan).

Although the AUMF does not expressly speak to the power to detain, the Court concluded that detention of the "limited category" of persons considered "for the duration of the particular conflict in which they were captured" is "so fundamental and accepted an incident to war" as to be a "necessary and appropriate" exercise of force permissibly delegated to the President. *Id.* at 518. That conclusion, in turn, expressly depended upon a "universal" understanding of the laws of war. *Id.*

(quoting *Ex parte Quirin*, 317 U.S. 1, 28 (1942)). Under the laws of war, if one can lawfully use deadly force against a combatant, one can incapacitate him to prevent his "return to the field of battle" to "tak[e] up arms once again." *Id.*; *see also In re Territo*, 156 F.2d 142, 145 (9th Cir. 1946).

At the same time, the Court emphasized that "[c]ertainly . . . indefinite detention for the purpose of interrogation is *not* authorized." *Hamdi*, 542 U.S. at 521 (emphasis added). The *Hamdi* plurality recognized that, in addition to limiting the purpose for which a person could be detained, the laws of war limit the conditions of detention. Accordingly, it coupled the congressional grant of power in the AUMF with the implicit, corresponding limits on the use of that power.

The Court observed that, on the one hand, holding a combatant in "protective custody" and treating him "humanely" is connected to the permissible purpose of preventing "further participation in the war." *Id.* (internal citations omitted). At the same time, the Court recognized that if a detention is motivated by "revenge," constitutes "punishment or an act of vengeance" or is not "devoid of all penal character," a detention would exceed the scope of the limited authority incorporated into the AUMF from the laws of war. *Hamdi*, 542 U.S. at 518 (quoting Yasmin Naqvi, *Doubtful Prisoner of War Status*, 84 Int'l Rev. Red Cross 571, 572 (2002) and William Winthrop, *Military Law and Precedents* 788 (rev. 2d ed. 1920)); *id.* at 521; *see also* Curtis A. Bradley and Jack L. Goldsmith, *Congressional Authorization and the War on Terrorism*, 118 Harv. L. Rev. 2047, 2095 (where

"an international law requirement . . . was a condition of the exercise of the particular authority," under the AUMF, a "violation of international law would negate a claim of implied authority under the AUMF"); Ryan Goodman and Derek Jinks, *Replies to Congressional Authorization: International Law, U.S. Powers and the Global War on Terrorism*, 118 Harv. L. Rev. 2653, 2660 (2005) ("[T]he power to detain is predicated, in many respects, on the treatment of detainees.").

The laws of war impose an additional limitation on the authority conferred by the AUMF: detention "may last no longer than active hostilities." *Hamdi*, 542 U.S. at 520 (citing Geneva Convention III (1955), Hague Convention II (1899), and Hague Convention IV (1907)). The Court acknowledged that the government's conception of the "war on terror" is "broad and malleable" and could potentially lead to "perpetual detention" of a kind unrecognized by the laws of war. That concern was not squarely presented in *Hamdi* because in 2004 when the case was decided, "active combat operations against Taliban fighters" were still ongoing. The Court cautioned, however, that if "the practical circumstances of a given conflict are entirely unlike those of the conflicts that informed the development of the law of war," the "understanding" that permits temporary detention "may unravel." *Hamdi*, 542 U.S. at 521.

Finally, the laws of war, and thus the AUMF, permit questioning of putative combatants, but any interrogation must be conducted "humanely" and voluntarily. *See Hamdi*, 542 U.S. at 521; Geneva Convention Relative to the Treatment of Prisoners of

War, ("Third Geneva Convention"), art. 17, Aug. 12, 1949, 75 U.N.T.S. 135 (prisoners of war "who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind").

Even though the government proclaims that al-Marri's detention is maintained in connection with an ongoing war, Congress has not issued the Executive a "blank check." *Cf. Hamdi*, 542 U.S. at 536; *see also Hamdan v. Rumsfeld*, 548 U.S. 557, 636 (2006) (Breyer, J., concurring). As such, the Executive cannot claim powers granted by the AUMF while simultaneously ignoring the limitations that Congress has placed on the use of those powers. *See Hamdi*, 542 U.S. at 550 (Souter, J., concurring in part and dissenting in part) (failure of Executive to abide by laws of war undermines its claim of authority under AUMF); *Hamdan*, 548 U.S. at 593 n.23 (2006) (President "may not disregard limitations that Congress has, in proper exercise of its own war powers, placed on his powers").[28]

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[28] *See also Little v. Barreme*, 6 U.S. 170, 177-78 (1804) (Marshall, C.J.) (where "act of Congress" authorizes president to seize ships sailing to French ports, "legislature seems to have prescribed the manner in which the law shall be carried into execution" to exclude seizures coming from French ports); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Clark, J., concurring) (reaffirming continuing vitality of *Barreme* principle, that president must abide by conditions implicitly set forth in statutory grants of power).

B. The Executive's Transfer of Al-Marri into Indefinite Military Detention for the Purpose of Interrogation Exceeded the AUMF'S Authorization for Detention of Combatants.

Even if the AUMF were construed to reach persons such as al-Marri, the government's actions in this case have exceeded any conceivable grant of authority from Congress. Congress did not authorize—and could not have authorized—either the Executive's evasion of Article III courts or its detention of al-Marri under conditions violating the laws of war.

1. Al-Marri's Transfer and Detention Were Not "Necessary" to Any Lawful Military Purpose.

Al-Marri's transfer into military custody cannot be considered "necessary" to any lawful military purpose under the AUMF. As described previously, *see supra* at 15-19, at the time that he was designated an "enemy combatant," al-Marri was entering his eighteenth consecutive month of detention in federal custody. Throughout al-Marri's custody he had been locked in solitary confinement. Moreover, the government was in the process of imposing SAMs, which it asserted would have limited his and counsel's ability to communicate any potentially harmful messages to the outside world. Further, al-Marri was soon to stand trial on charges that could have subjected him to imprisonment for thirty years. In addition, to the outstanding charges, the government had at its disposal a panoply of

federal counterterrorism laws with which to prosecute al-Marri.[29]

Manifestly, because al-Marri was already incapacitated by the criminal justice system and, if convicted, would have been subject to near lifetime imprisonment, his transfer into military custody added no additional—let alone "necessary"—protection against his potential "return" to a putative "battlefield."[30] And, despite the President's proclamation that al-Marri represented "a continuing, present, and grave danger to the national security of the United States," Pet. App. 467a, the government has yet to explain how any such threat could have materialized given al-Marri's solitary confinement inside a maximum security prison.

If al-Marri's military custody could be considered "necessary" under the AUMF or under some construction of the laws of war, then the military detention of *any* accused terrorist in criminal custody could be deemed necessary. Given the potentially unlimited duration of this asserted war against terrorism, accepting the government's theory would risk subjugating Article III courts to the whims of the Executive, which would be free to

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[29] *See* Richard B. Zabel and James J. Benjamin, *In Pursuit of Justice: Prosecuting Terrorism Cases in Federal Court* (2008).

[30] That al-Marri was removed from an ongoing criminal process starkly underscores the conclusion that he could not be considered a "combatant" under longstanding law-of-war principles. Military personnel typically capture combatants in a zone of active hostilities, not from inside a domestic prison cell.

employ or disregard those courts to its tactical advantage. *Cf. Reid v. Covert*, 354 U.S. 1, 30 (1957) (recognizing "the well-established purpose of the Founders to keep the military strictly within its proper sphere, subordinate to civil authority"); *Dow v. Johnson,* 100 U. S. 158, 169 (1879) ("The military should always be kept in subjection to the laws of the country to which it belongs, and that he is no friend to the Republic who advocates the contrary."); *Ex parte Milligan*, 71 U.S. 2, 124 (1866) (if courts permit the Executive to "substitute military force for and to the exclusion of the laws, and punish all persons, as [the executive] thinks right and proper, without fixed or certain rules . . . [then] republican government is a failure, and there is an end of liberty regulated by law").

This Court, however, has consistently placed limits on the Executive's asserted "necessity" to depart from baseline constitutional norms. In *Milligan*, the Court emphatically concluded that the President could not subject a citizen to military jurisdiction, regardless of his dangerousness or asserted military necessity, "where the courts are open and their process unobstructed." 71 U.S. at 121. The Court explained that "no reason of necessity could be urged" against the orderly procession of a criminal trial, "because Congress had declared penalties against the offences charged, provided for their punishment, and directed that court to hear and determine them." *Id.* at 122.

The Court further instructed, in terms equally applicable here, that the

> [G]overnment had no right to conclude that Milligan, if guilty, would not

> receive in that court merited punishment, for its records disclose that it was constantly engaged in the trial of similar offences, and was never interrupted in its administration of criminal justice.

Id.; *see also Duncan v. Kahanamoku*, 327 U.S. 304, 322 (1946) (narrowly construing statutory provision authorizing "martial law" in Hawaii so as not "to authorize the supplanting of courts by military tribunals"); *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (rejecting President's assertion of military necessity to seize domestic steel mills as part of war effort).

2. Al-Marri's Transfer, Continuing Detention and Conditions of Confinement Are Not "Appropriate" to Any Lawful Military Purpose.

It appears that the government transferred al-Marri to military custody following its request for, and the issuance of, misguided and subsequently revoked legal advice from the Office of Legal Counsel, which concluded that the Executive was not subject to any constitutional, statutory or treaty-based constraints on the detention of "enemy combatants"—even those detained inside the United States.[31] The transfer reflected a startlingly cavalier attitude toward our courts and criminal justice

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[31] *See supra* at 10-12.

system.[32] It appears to have been driven by an interest in denying al-Marri the opportunity to avail himself of an open justice system and subjecting him instead to a detention system designed to produce "dependency and trust" on his interrogators.[33] Indeed, by transferring al-Marri to military detention, the government condemned him to a regime of isolation and interrogation that bordered on, and sometimes constituted, torture.[34]

Al-Marri's detention has thus not been "appropriate" to the authorized goal of protective and humane incapacitation. Rather, it has constituted precisely the "inhumane," "vengeful," and "punitive" detention that is proscribed by the laws of war and the AUMF. *See Hamdi*, 542 U.S. at 518. In fact, al-Marri's detention contravenes the Court's decisions in both *Hamdi* and *Hamdan*. Not only did the Executive subject al-Marri to "long-term detention

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[32] *See supra* at 6-7 (describing reasons given by U.S. Attorney General for al-Marri's transfer out of criminal process). The recognition that courts have long been concerned about the deleterious effects of prolonged solitary confinement likely informed the preference of the government to move al-Marri out of the jurisdiction of, and potential remediation by, an Article III court. *See, e.g., Davenport v. DeRobertis*, 844 F.2d 1310, 1313 (7th Cir. 1988) ("[I]solating a human being from other human beings year after year or even month after month can cause substantial psychological damage."); *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 914 (S.D. Tex. 1999) ("[T]he pain and suffering caused by extreme levels of psychological deprivation are equally, if not more, cruel and unusual than a lashing.").

[33] *See supra* at 8-9.

[34] *See supra* at 15-19. As Justice Frankfurter recognized, "There is torture of mind as well as body; the will is as much affected by fear as by force. And there comes a point where this Court should not be ignorant as judges of what we know as men." *Watts v. Indiana*, 338 U. S. 49, 52 (1949).

for the purpose of interrogation"—which the *Hamdi* Court concluded was "certainly" not authorized, 542 U.S. at 521—it subjected him to treatment inconsistent with Common Article 3 of the Geneva Conventions. *Hamdan*, 548 U.S. at 629-31 (Common Article 3 sets the baseline for humane treatment of all military detainees and is binding on the United States); *id.* at 642 (Kennedy, J., concurring) (observing that violations of Common Article 3 by U.S. officials constitute "war crimes" punishable as federal crime).

Moreover, even if the AUMF could be construed to apply domestically, Congress could not have meant to authorize treatment representing such a profound departure from the country's most fundamental constitutional norms. In the midst of an earlier global struggle against a committed military and ideological enemy, the Supreme Court stressed that only authoritarian states employ "unrestrained power to seize person[s] suspected of crimes against the state, hold them in secret custody, and wring from them confessions by physical or mental torture." *Ashcraft v. Tennessee*, 322 U.S. 143, 155 (1944). It vowed that, "[s]o long as the Constitution remains the basic law of our Republic, America will not have that kind of government." *Id.* at 155. *See also Padilla*, 542 U.S. at 465 (Stevens, J., dissenting) ("Executive detention for the purpose of investigating and preventing subversive activity is the hallmark of the Star Chamber. . . . It may not . . . be justified by the naked interest in using unlawful procedures to extract information.").

Similarly, any assertion that al-Marri's detention resembles a "simple war measure" is fatally undermined by comparison with our international obligations, as well as a long history of U.S. policy and practice regarding the humane treatment of wartime detainees. The Geneva Conventions place strict limits on the methods and conditions of confinement,[35] as do long-standing U.S. military regulations.[36] Al-Marri's detention likewise stands in stark contrast to over 200 years of U.S. practice, which has always been to maintain the highest standards of military conduct, even in conflicts as precarious as that which purportedly compelled the detention and interrogation of al-Marri.[37] As such,

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[35] Third Geneva Convention, art. 17 (prohibiting any "form of coercion"); *id.* art. 25 (living conditions must be "as favourable as those for the forces of the Detaining Power who are billeted in the same area"); *id.* art. 13 (prohibiting "prolonged isolation"); *id.* art. 38 (requiring meaningful opportunities for exercise and time outdoors); *id* art. 72 (correspondence with family members); *id.* art. 34 ("complete latitude" for religious exercise).

[36] *See* U.S. Dep't Army, Field Manual, 34-52, 1-7 (prohibiting "use of force, mental torture, threats, insults, or exposure to unpleasant and inhumane treatment of any kind"); *id.* at 3-19.40, 4-60 (limiting segregation to no more than 30 days); *id.* at 3-19.40, 2-15, 2-18 (mandating full opportunity for worship and outdoor recreation); *see also* U.S. Dep't Army Regulation 190-8, *Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees* § 3.4(e) (detainees "shall in no case" be subjected to conditions "prejudicial to their health.").

[37] *See, e.g.*, David Hackett Fischer, *Washington's Crossing* 113, 255 (2003) (describing General George Washington's insistence that British prisoners of war be treated "with humanity" despite brutal treatment American soldiers were enduring on British prison ships); General Orders No. 100: Instructions for the Government of Armies of the United States in the Field ("Lieber Code") § III, art. 56, 75 (April 24, 1863)

Congress could not have authorized such extra-legal and unprecedented conduct by the Executive.

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This Court has an obligation to "promote confidence in the administration of justice [and] to preserve the judicial process from contamination." *Olmstead v. United States*, 277 U.S. 438, 484 (1928) (Brandeis, J., dissenting); *see also Sherman v. United States*, 356 U.S. 369, 380 (1958) (Frankfurter, J., concurring). In light of this Court's supervisory authority over the U.S. justice system and the troubling evidence of the government's desire to operate outside domestic and international law, *amici* urge this Court to reverse the Fourth Circuit's decision and thus avoid giving what might be seen as an imprimatur to the government's extra-legal conduct. "For if this Nation is to remain true to the ideals symbolized by its flag, it must not wield the tools of tyrants even to resist an assault by the forces of tyranny." *Padilla*, 542 U.S. at 465 (Stevens, J., dissenting).

(Civil War era code proposing limitations on methods of interrogation and barring the "intentional infliction of suffering, or disgrace, by cruel imprisonment"); Joseph Margulies, *Guantanamo and the Abuse of Presidential Power* 74-75 (2006) (explaining that U.S. government treated prisoners of War during World War II and Korean War with "an almost compulsive regard for the Geneva Conventions" despite failure of enemy governments to reciprocally comply); George S. Prugh, *Law at War: Vietnam 1964-1973* 75-76 (1975) (describing policy of absolute compliance with POW protections for North Vietnamese prisoners).

CONCLUSION

For the foregoing reasons, the Court should reverse the judgment of the Court of Appeals for the Fourth Circuit.

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APPENDIX

Amicus **Human Rights Watch** ("HRW") is a non-profit organization established in 1978 that investigates and reports on violations of fundamental human rights in over 70 countries worldwide. It is the largest international human rights organization based in the United States. By exposing and calling attention to human rights abuses committed by state and non-state actors, HRW seeks to raise the cost of human rights abuse and build pressure upon offending governments and others to end abuses. Human Rights Watch's terrorism and counterterrorism program documents abuses committed by terrorist groups and their supporters, and monitors counterterrorism laws, policies, and practices that infringe upon basic human rights.

Amicus **Center for Constitutional Rights** ("CCR") is a non-profit legal and educational organization dedicated to protecting and advancing the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights. CCR uses litigation proactively to advance the law in a positive direction, and to strengthen the broader movement for constitutional and human rights. As part of its advocacy on behalf of those whose civil, constitutional and human rights have been violated, CCR coordinates the representation of hundreds of individuals detained at the Guantánamo Bay Naval Station, and has twice brought the issue of the legality of their detention before this Court. *See Rasul v. Bush*, 542 U.S. 466 (2004); *Boumediene v. Bush*, 553 U.S. __ (2008).

Amicus **Physicians for Human Rights** ("PHR"), since 1986, has mobilized health professionals to advance the health and dignity of all people through action that promotes respect for human rights. PHR has been in the forefront of the global fight against torture and was one of the lead authors of the Istanbul Protocol on documenting torture adopted by the U.N. in 1999. PHR joins in this brief in support of constitutional principles and international instruments prohibiting torture.

Amicus **National Religious Campaign Against Torture** ("NRCAT") is a coalition of religious organizations committed to ending U.S.-sponsored torture and cruel, inhuman and degrading treatment. Since its formation in January 2006, over 240 religious groups have joined NRCAT, including representatives from the Roman Catholic, evangelical Christian, mainline Protestant, Unitarian, Quaker, Orthodox Christian, Jewish, Muslim, Buddhist, Hindu and Sikh communities. NRCAT's Statement of Conscience, endorsed by hundreds of religious organizations and tens of thousands of individuals declares that: "Torture violates the basic dignity of the human person that all religions, in their highest ideals, hold dear. It degrades everyone involved—policy-makers, perpetrators and victims. It contradicts our nation's most cherished values. Any policies that permit torture and inhumane treatment are shocking and morally intolerable."

Amicus **Islamic Society of North America** ("ISNA") was established in 1981 as an association of Muslim organizations and individuals that provides a common platform for presenting Islam, supporting

Muslim communities, developing educational, social and outreach programs, and fostering good relations with other religious communities, as well as with civic and service organizations. ISNA is a founding member of NRCAT and has been a consistent advocate for human rights for all persons.

Amicus **Evangelicals for Human Rights** ("EHR") is a project of NRCAT that seeks to articulate a compelling biblical case for a zero-tolerance stance on torture by any government for any reason, including the United States in its war on terror, and advocates for application of that commitment in the conduct of the war on terror. Founded in 2006, EHR focuses its education efforts on the evangelical community and seeks to reaffirm the centrality of human rights as an unshakeable biblical obligation fundamental to an evangelical Christian social and moral vision.

Amicus **The Advocates for Human Rights** is a non-profit organization dedicated to the promotion and protection of internationally recognized human rights. Founded in 1983, today The Advocates for Human Rights engages more than 800 active volunteers annually to document human rights abuses, advocate on behalf of individual victims of human rights violations, educate on human rights issues, and provide training and technical assistance to address and prevent human rights violations. The Advocates for Human Rights has a strong interest in ensuring that the United States construes its authority to detain persons in a way that is consistent with international human rights standards and to adhere to the United States' non-derogable obligation to never engage in torture.